MENTERI SUMBER MANUSIA

v.

JOHN HANCOCK LIFE INSURANCE (MALAYSIA) BHD & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
MOHD GHAZALI YUSOFF JCA
AUGUSTINE PAUL JCA
[CIVIL APPEAL NOS: W-01-32-2003& W-02-419-2003]
7 DECEMBER 2006

LABOUR LAW: *Industrial Court - Reference by minister - Whether minister correctly exercised his discretion in referring claimant's representations of unjust dismissal to Industrial Court for an award - Whether minister erred in law and acted in excess of jurisdiction - Whether judge wrong in issuing orders of certiorari and prohibition*

LABOUR LAW: *Industrial Court - Jurisdiction - Reference by minister of claimant's representations of unjust dismissal to Industrial Court - Whether issue of claimant being a "workman" solely an issue for Industrial Court to decide - Whether claimant's removal could not be subject to adjudication by Industrial Court - Whether exercise of discretion by minister correct*

ADMINISTRATIVE LAW: *Remedies - Certiorari and prohibition - Whether minister correctly exercised his discretion in referring claimant's representations of unjust dismissal to Industrial Court for an award - Whether minister erred in law and acted in excess of jurisdiction - Jurisdiction of Industrial Court - Whether judge wrong in issuing orders of certiorari and prohibition*

These two appeals stemmed from the decision of the learned High Court judge allowing the application of the applicant ('company') against the 1st respondent, the Minister of Human Resources, Malaysia ('Minister'), the 2nd respondent ('claimant') and the 3rd respondent ('Industrial Court') for the following reliefs: (i) an order of *certiorari* to quash the decision of the Minister for referring representations made by the claimant under s. 20 of the Industrial Relations Act 1967 ('Act') to the Industrial Court for adjudication; and (ii) an order of prohibition to prevent the Industrial Court from hearing the claimant's representations under s. 20 of the Act.

A The claimant, employed by the company as the President & Chief Executive Officer ('aforesaid positions'), had his services terminated by the company. He consequently made representations to the Director General for Industrial Relations ('Director General') under s. 20 of the Act on the basis that he considered his B dismissal to be without just cause or excuse.

The Director General took steps to arrive at an expeditious settlement pursuant to s. 20(2) of the Act; at that stage, the company raised the two following issues: (a) whether the claimant C could properly be classified as a "workman" within the meaning of s. 20 of the Act; and (b) whether the claimant, having been removed by way of two resolutions passed at an extraordinary general meeting of the company, could challenge such removal by way of reference under s. 20 of the Act. Since no settlement D could be reached, the Director General notified the Minister, who decided to refer the claimant's representations to the Industrial Court for an award pursuant to s. 20(3) of the Act. Subsequently, the company applied for *certiorari* and prohibition, which the High Court allowed on the following grounds: (i) that the Minister erred E in law in failing to deal with the threshold jurisdictional issue as to whether the claimant was a workman under the Act; (ii) that the Minister had erred in law in failing to appreciate that the removal of the claimant could not be subjected to adjudication by the Industrial Court and was outside the purview of s. 20 of the Act; F and (iii) that the Minister had failed to direct himself in law and if he had done so, he would have come to the conclusion that the claimant was not a "workman" under the Act. The Minister and the claimant appealed against this decision.

G **Held (allowing both appeals)**
Per Ghazali Mohd Yusoff JCA:

(1) The issue of whether the claimant was a workman was solely for the Industrial Court to decide, and the learned judge was wrong in issuing an order of *certiorari* to quash the decision of H the Minister and in issuing the order of prohibition. The law is clear, namely, that where there are mixed questions of law or fact arising from representations under s. 20 of the Act, the proper forum to decide on such issues would be the Industrial Court and not the Minister. The Minister's role under s. 20 I of the Act is to ascertain whether the representations, on the facts and material placed before him, raised serious questions

of fact or of law calling for adjudication. On the facts of the instance case, the Minister had correctly exercised his discretion under s. 20(3) of the Act in referring the claimant's representations to the Industrial Court for an award. The learned judge erred in law in holding that the claimant was not a workman as that would be tantamount to usurping the power of the Industrial Court. (paras 24, 26, 34 & 36)

(2) The learned judge made an erroneous finding of law when he ruled that the removal of the claimant by way of a general meeting could not be the subject of adjudication by the Industrial Court. The mode, method or procedure adopted by the company in removing the claimant had nothing to do with s. 20 of the Act. At the end of the day, it was the company that employed him and it was the company that removed him from the aforesaid positions. The effect of members of a company casting their votes at an EGM to pass resolutions to remove an executive director and/or corporate officer from such positions was still regarded as an act of the company. As such, the learned judge's decision that such a dismissal in a general meeting could not be subject to adjudication by the Industrial Court was a wrong perception of the law. It gave rise to absurdity as companies would be able to terminate any of its employees through its members in a general meeting knowing that the Minister could not refer the dismissed employee's representations to the Industrial Court for an award, notwithstanding that on the face of the record the dismissal was without just cause or excuse. (paras 26 & 38)

(3) The Minister's act in referring the claimant's representations under s. 20 of the Act to the Industrial Court for an award was a correct exercise of discretion under the circumstances of the instant appeal. The company's averment that the Minister had erred in law and had acted without jurisdiction or in excess of jurisdiction, and had taken into account irrelevant matters bore no merits. There is no provision under the Companies Act 1965 or the Act which precludes an employee holding the position of Managing Director, Chief Executive Officer or any other executive position by whatever name called who was engaged under a contract of employment with a company from challenging his dismissal or removal by the company through the adoption of its members' resolution in a general meeting. (para 40)

A ***Bahasa Malaysia*** *translation of headnotes*

Rayuan-rayuan di sini berasal dari keputusan yang arif hakim Mahkamah Tinggi kerana membenarkan permohonan pemohon ('syarikat') terhadap responden pertama, Menteri Sumber Manusia, B Malaysia ('Menteri'), responden kedua ('yang menuntut') dan responden ketiga ('Mahkamah Perusahaan') bagi relif-relif berikut: (i) suatu perintah *certiorari* bagi membatalkan perintah Menteri yang merujuk representasi yang menuntut di bawah s. 20 Akta Perhubungan Perusahaan 1967 ('Akta') kepada Mahkamah C Perusahaan untuk pengadilan; (ii) satu perintah larangan bagi menghalang Mahkamah Perusahaan dari mendengar representasi yang menuntut di bawah s. 20 Akta. Yang menuntut, yang bekerja dengan syarikat sebagai Presiden & Ketua Pegawai Eksekutifnya (jawatan-jawatan tersebut'), telah diberhentikan kerja oleh syarikat. D Beliau kemudian membuat representasi kepada Ketua Pengarah Perhubungan Perusahaan ('Ketua Pengarah') di bawah s. 20 Akta atas dakwaan bahawa beliau menganggap dirinya sebagai telah dibuang kerja tanpa sebab dan alasan yang sah.

E Ketua Pengarah telah mengambil langkah untuk mencapai penyelesaian secepat yang mungkin di bawah s. 20(2) Akta; pada peringkat itu, syarikat membangkitkan dua isu iaitu: (a) sama ada yang menuntut boleh digolongkan sebagai seorang "pekerja" seperti yang dimaksudkan s. 20 Akta; dan (b) sama ada yang menuntut, F yang dibuang kerja ekoran dua resolusi yang diluluskan oleh mesyuarat agong luar biasa syarikat, boleh mencabar pembuangan kerjanya melalui rujukan di bawah s. 20 Akta. Apapun, oleh kerana tiada penyelesaian dicapai, Ketua Pengarah telah menghantar notifikasi kepada Menteri, yang kemudian merujuk representasi G yang menuntut ke Mahkamah Perusahaan untuk suatu award di bawah s. 20(3) Akta. Berikutnya, syarikat memohon perintah certiorari dan halangan yang mana ianya dibenarkan oleh Mahkamah Tinggi atas alasan: (i) bahawa Menteri khilaf di sisi undang-undang kerana gagal menangani isu bidangkuasa puncak sama ada yang menuntut merupakan seorang pekerja di bawah H Akta; (ii) bahawa Menteri khilaf di sisi undang-undang kerana gagal memahami bahawa pembuangan kerja yang menuntut tidak boleh tertakluk kepada pengadilan oleh Mahkamah Perusahaan dan tidak dirangkum oleh s. 20 Akta; dan (iii) bahawa Menteri gagal I mengarahkan dirinya dengan betul di sisi undang-undang dan sekiranya beliau berbuat demikian, beliau tentu akan mendapati bahawa yang menuntut bukan seorang pekerja di bawah Akta. Menteri dan yang menuntut merayu terhadap keputusan itu.

Diputuskan (membenarkan kedua-dua rayuan)
Oleh Ghazali Mohd Yusoff HMR:

(1) Isu sama ada yang menuntut seorang pekerja adalah isu yang harus diputuskan oleh Mahkamah Perusahaan sepenuhnya, dan yang arif hakim khilaf pabila mengeluarkan perintah certiorari bagi membatalkan keputusan Menteri dan kerana mengeluarkan perintah halangan. Undang-undang adalah jelas, iaitu, di mana terdapat percampuran persoalan undang-undang dan fakta yang berbangkit dari representasi di bawah s. 20 Akta, maka forum yang sesuai untuk memutuskan isu-isu berkenaan adalah Mahkamah Perusahaan dan bukannya Menteri. Peranan Menteri di bawah s. 20 Akta adalah untuk menentukan sama ada representasi, berdasarkan fakta dan material yang ada di hadapannya, membangkitkan persoalan undang-undang ataupun persoalan fakta yang serius yang memerlukan pengadilan. Atas fakta kes semasa, Menteri telah melaksanakan budibicaranya di bawah s. 20(3) Akta dengan betul apabila merujuk representasi yang menuntut ke Mahkamah Perusahaan untuk suatu award. Maka itu, yang arif hakim khilaf apabila memutuskan bahawa yang menuntut bukan seorang pekerja kerana itu samalah seperti merampas kuasa Mahkamah Perusahaan.

(2) Yang arif hakim membuat dapatan undang-undang yang khilaf apabila beliau memutuskan bahawa pembuangan kerja yang menuntut melalui mesyuarat agong tidak boleh tertakluk kepada pengadilan Mahkamah Perusahaan. Cara, gaya atau prosedur yang dipakai oleh syarikat ketika membuang kerja yang menuntut tidak kena mengena dengan s. 20 Akta. Pada analisa terakhirnya, syarikat yang menggaji beliau dan syarikat jugalah yang membuang kerja beliau dari jawatan-jawatan tersebut. Kesan dari tindakan ahli-ahli mengundi di EGM untuk meluluskan resolusi untuk memberhentikan seorang pengarah eksekutif dan/atau seorang pegawai korporat dari jawatan-jawatan mereka adalah bahawa ianya masih dianggap sebagai satu tindakan oleh syarikat. Oleh itu, keputusan yang arif hakim bahawa pembuangan kerja di mesyuarat agong sedemikian tidak boleh tertakluk kepada pengadilan Mahkamah Perusahaan adalah satu tanggapan undang-undang yang salah. Ini membangkitkan satu kejahilan kerana syarikat-syarikat boleh sewenang-wenang memberhentikan pekerja-pekerjanya melalui ahli-ahlinya di mesyuarat agong, disebabkan Menteri tidak

A boleh merujuk representasi pekerja yang dibuang itu ke Mahkamah Perusahaan untuk suatu award, walaupun pembuangan kerja di permukaan rekod dibuat tanpa sebab dan alasan yang sah.

B **(3)** Dalam halkeadaan rayuan di sini, Menteri telah melaksanakan budi bicaranya dengan betul apabila merujuk representasi yang menuntut ke Mahkamah Perusahaan untuk suatu award di bawah s. 20 Akta. Dakwaan syarikat bahawa Menteri khilaf di sisi undang-undang, atau telah bertindak di luar atau tanpa C bidangkuasa adalah tidak bermerit. Tidak ada peruntukan di dalam Akta Syarikat 1965 ataupun Akta yang menghalang seorang pekerja yang memegang jawatan Pengarah Urusan, Ketua Pegawai Eksekutif atau mana-mana jawatan eksekutif lain walau apa sekalipun gelarannya, yang mempunyai kontrak D pekerjaan dengan syarikat, dari mencabar pembuangan kerja atau pemberhentiannya oleh syarikat yang dibuat dengan cara resolusi ahli-ahli di mesyuarat agong.

Case(s) referred to:

Chief Constable of the North Wales Police v. Evans [1982] 3 All ER ***(refd)***

E *Chong Kim Sang v. Metratrade Sdn Bhd [2004] 2 CLJ 439 CA* ***(refd)***

Dr A Dutt v. Assunta Hospital [1981] 1 MLJ 304 ***(refd)***

Hong Leong Equipment Sdn Bhd v. Liew Fook Chan [1997] 1 CLJ 665 CA ***(refd)***

Kathiravelu Ganesan & Anor v. Kojasa Holdings Bhd [1997] 3 CLJ 777 SC

F ***(refd)***

Minister of Labour Malaysia v. National Union of Journalists Malaysia [1991] 1 MLJ 25 ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 128(2), (3), 145

G Industrial Relations Act 1967, ss. 2, 20(2), (3)

For the appellant (1st appeal) - Alice Loke SFC

For the appellant (2nd appeal) - N Sivabalah (Raymond TC Low with him); M/s Shearn Delamore & Co

For the respondent (both appeals) - R Abraham (Mazura Kamaludin with

H *him); M/s Shook Lin & Bok*

[Appeal from High Court, Kuala Lumpur; Judicial Review Application No: R1-25-30-2002]

Reported by Suresh Nathan

I

JUDGMENT

Mohd Ghazali Yusoff JCA:

[1] These two appeals which were heard together stem from the decision of Faiza Tamby Chik, J who allowed the application of John Hancock Life Insurance (Malaysia) Berhad (the applicant and hereinafter referred to as "the company") against the Minister of Human Resources, Malaysia (the 1st respondent and hereinafter referred to as "the Minister"), Ng Kim Hoong (the 2nd respondent and hereinafter referred to as "the claimant") and the Industrial Court (the 3rd respondent and hereinafter referred to as "the Industrial Court") for the following reliefs:

(i) an order of *certiorari* to quash the decision of the Minister for referring representations made by the claimant under s. 20 of the Industrial Relations Act 1967 ("the Act") to the Industrial Court for adjudication; and

(ii) an order of prohibition to prevent the Industrial Court from hearing the claimant's representations under s. 20 of the Act.

[2] The Minister and the claimant are the respective appellants in these appeals.

The Back Ground

[3] By letter dated 9 April 1997, the company offered the claimant the position of President & Chief Executive Officer (hereinafter referred to as "the aforesaid positions") with a basic monthly salary of RM25,000; the letter reads:

> Dear Mr. Ng,
>
> Here are the key points of our offer to you concerning the position of President & Chief Executive Officer of John Hancock Life Insurance (Malaysia) Berhad, referred to hereafter as the Company.
>
> 1. You will receive **a basic monthly salary of RM25,000.**
>
> 2. You will be eligible to participate in the Company's Incentive Compensation Plan. Awards under this Plan are related to the Company's performance relative to the annual goals approved by the Board of Directors. Your target award will be four times your basic monthly salary. The actual award for 1997, distributed in May 1998, will be based on RM100,000 pro-rated for the number of months of service in 1997.

A 3. The Company will provide group life, and retirement benefits in accordance with the rules and regulations of the schemes that are in place. You and your family will be covered for the medical benefits of the company. Any change in employee benefit schemes shall be decided by the Board of Directors.

B 4. You will be entitled to a fully-maintained company car with a driver. The car will be a Mercedes E230. The car will be replaced every five years. Any change in make and model of the company car shall be decided by the Board of Directors.

C 5. The Company will provide a golf club membership for you and your family at KL Golf & Country Club and pay for the monthly subscriptions of two other clubs, ie, Royal Selangor Golf Club and Bukit Kiara Equestrian Club. If, for any reason, **your employment with the Company** is terminated before five years (60 months) from the effective date of employment, you are D required to pay back to the Company the outstanding balance of the amortized cost of the golf membership over the five year period.

6. There will be a period of up to six months before your appointment is confirmed by the Board of Directors. During this E period, your **employment** may be terminated without cause by either party upon two weeks notice.

7. **After your confirmation by the Board of Directors,** you will be entitled to 22 working days of annual leave per year.

F This letter is intended to reflect the oral agreement achieved through Mr. C.F. Lee of Wendy Lau Associates Sdn Bhd. Should you find it to be acceptable as is, please indicate your acceptance of this offer and confirm your intention to join John Hancock Life Insurance (Malaysia) Berhad.

G I hope we may look forward to welcoming you to this **key senior executive appointment** in the John Hancock family of companies.

Yours sincerely
(Sign.)
H Derek Chilvers
Chairman of the Personnel Committee
John Hancock Life Insurance
(Malaysia) Berhad

I Accepted and Confirmed:
(Sign.)
John Ng Kim Hoong. (emphasis added)

[4] The claimant accepted the aforesaid offer and commenced employment with the company with effect from 1 May 1997 in the aforesaid positions. He was also appointed director of the company on 1 May 1997. The claimant's employment with the company was subjected to a probationary period of approximately six months. His appointment in the aforesaid positions was also contingent upon the approval of Bank Negara Malaysia, which was given on 15 August 1997. In relation to this, the extract of minutes of the Company's board of Directors' meeting ("the board") held on 30 April 1997 reads:

> 2. Appointment of CEO
>
> On recommendation from the Personnel Committee, the Board approved the appointment of Mr John Ng Kim Hoong as **Acting President and Chief Executive Officer as well as Managing Director** of the Company with effect from 1 May 1997. His appointment is in an acting capacity until such time as approved by Bank Negara. Mr Ng's appointment is therefore subject to Bank Negara's approval and the terms and conditions as stipulated in the Company's letter of offer to him dated 9 April 1997. (emphasis added)

[5] The company later confirmed the claimant's employment in the aforesaid positions at the conclusion of his probationary period. Other terms and conditions of service in relation to the aforesaid positions are contained in the Company's "Corporate Officers Service Manual" ("the service manual"). The preamble to the service manual, *inter alia*, reads:

> The terms and conditions of employment and prerequisites provided as set forth in this Service Manual **shall be applicable to all Executive Directors and confirmed Malaysian employees** of John Hancock Life Insurance (Malaysia) Berhad holding the rank of Assistant Vice President and above" (hereinafter termed "Corporate Officers" or "Officers"). They shall not apply to non-Executive Directors of the Company. (emphasis added)

[6] However at a meeting of the Board on 17 November 2000, the board resolved to requisition for an extraordinary general meeting (EGM) to pass the following ordinary resolutions, namely:

> (i) That Mr John Ng Kim Hoong be and is hereby **removed as Director and Managing Director** of the Company with immediate effect; and

A (ii) That Mr John Ng Kim Hoong be and is hereby **removed as President and Chief Executive Officer** of the Company with immediate effect. (emphasis added)

[7] Special notice was given to members of the company, the Kuala Lumpur Stock Exchange and the claimant (pursuant to s. 128(2) of the Companies Act 1965) in respect of the resolutions. In response the claimant made written representations to the company pursuant to s. 128(3) of the Companies Act 1965.

C **[8]** In the company's circular to its members in relation to the proposed removal as well as notice of the EGM, the reasons for the proposed removal included the following:

D (e) As **Managing Director, President and Chief Executive Officer** of the Company, Mr John Ng Kim Hoong was entrusted with the execution and implementation of the Yearly Business Plans and is accountable for ensuring that the targets set out in the said Plans were met and the objectives of the Company realised.

E (f) The continuous deterioration of the Company's position in terms of market share, and failure to meet Yearly Business Plan Targets in other key aspects of life insurance business as mentioned above, have caused the Board of Directors to lose confidence in the ability of Mr John Ng Kim Hoong to effectively discharge his duties and functions as **Managing Director, President and Chief Executive Officer** of the Company and his related position on the Board. The Board therefore has found it necessary to take the present course of action in the best interests of the Company. (emphasis added)

G **[9]** The EGM of the company was held on 5 January 2001 wherein the following resolutions were passed by a majority of the total votes cast, namely:

H (i) that the claimant be and is hereby removed as director and Managing Director with immediate effect; and

(ii) that the claimant be and is hereby removed as President and CEO with immediate effect.

I

[10] By letter addressed to the claimant dated 9 January 2001, the company confirmed the aforesaid resolutions and terminated his services with effect from 5 January 2001. That letter, *inter alia*, reads:

> Dear Mr Ng,
>
> Re: Letter of Appointment dated April 9, 1997
>
> **Removal as President and Chief Executive Officer of the Company**
>
> We refer to the Extraordinary General Meeting of the Company held on January 5, 2001 and the Resolution passed removing you as **President and Chief Executive Officer** of the Company.
>
> Please be informed that your services as **President and Chief Executive Officer** of the Company are accordingly terminated with effect from January 5, 2001.
>
> The Company will pay you **two months' salary** *in lieu* of notice less the sum of RM41,008.00 being reimbursement due to the Company in respect of the unvested *(sic)* portion of club membership fees paid by the Company.
>
> Please be informed that **the above payment (which will be released upon receipt of clearance from the Inland Revenue Department)** is made without prejudice and subject to all and such other claims the Company has or may have against you. (emphasis added)

The Representations

[11] The claimant consequently made representations to the Director General for Industrial Relations ("the Director General") under s. 20 of the Act on the basis that he considered his dismissal from the aforesaid positions to be without just cause or excuse. Upon receipt of the representations the Director General took steps to arrive at an expeditious settlement pursuant to s. 20(2) of the Act; at that stage, the company raised the two following issues:

(i) whether the claimant can properly be classified as a "workman" within the meaning of s. 20 of the Act;

(ii) whether the claimant, having been removed by way of two resolutions passed at an EGM of the company, can challenge such removal by way of reference under s. 20 of the Act.

[12] No settlement could be reached as a result of which the Director General notified the Minister. On 21 February 2002, the Minister decided to refer the claimant's representations to the Industrial Court for an award pursuant to s. 20(3) of the Act.

The Application

[13] On or about 4 April 2002, the company filed a leave application for judicial review in the Kuala Lumpur High Court and for an order that all proceedings against the company in the Industrial Court be stayed pending the hearing and final determination of these proceedings for leave and the application for the substantive reliefs thereto.

[14] The grounds upon which the reliefs were sought for can be summarised as follows:

(a) the Minister acted without jurisdiction or in excess of jurisdiction in referring the dispute to the Industrial Court as the Industrial Court has no jurisdiction to adjudicate on a decision made by members in general meeting acting under s. 128 of the Companies Act, 1965 and the company's articles of association; furthermore, a decision made by members to remove a director/officer of a company would not in law amount to a "dismissal" under industrial law;

(b) the Minister misdirected himself in law and acted in excess of jurisdiction in deciding that the Industrial Court was the proper forum to adjudicate the matter as the Industrial Court is only vested with jurisdiction under the Act to adjudicate upon a "dismissal" of a "workman" whereas the claimant was not a "workman";

(c) the Minister erred in law and in jurisdiction as the Industrial Court is not empowered to adjudicate on the claimant's removal from the aforesaid positions by members of the company;

(d) the Minister erred in law and exceeded his jurisdiction when he failed to appreciate that if the Industrial Court were to adjudicate upon the matter the Industrial Court would be acting contrary to law, to wit, s. 128 of the Companies Act 1965;

(e) the Minister erred in law and acted in excess of jurisdiction as he failed to take into consideration that due to the aforesaid positions, the claimant was as a matter of fact and law the directing mind and will of the company at all material times.

[15] Leave was granted on 3 May 2002 by the High Court. On 23 April 2003 the High Court allowed the company's application for *certiorari* and prohibition with costs on the following grounds:

(i) that the Minister erred in law in failing to deal with the threshold jurisdictional issue as to whether the claimant was a workman under the Act;

(ii) that the Minister had erred in law in failing to appreciate that the removal of the claimant in the aforesaid positions cannot be subjected to adjudication by the Industrial Court and was outside the purview of s. 20 of the Act;

(iii) that the Minister had failed to direct himself in law and if he had done so, he would come to the conclusion that the claimant was not a 'workman' under the Act.

[16] Against the above decision, the Minister and the claimant appealed.

[17] In his grounds of decision the learned judge said that any challenge to the threshold jurisdiction of the Industrial Court must be taken by way of challenge to the decision of the Minister's act in referring the dispute to the Industrial Court and not otherwise and this was categorically set out by the Supreme Court in *Kathiravelu Ganesan & Anor v. Kojasa Holdings Bhd* [1997] 3 CLJ 777 at p. 796 (per Gopal Sri Ram JCA):

> It follows that in all cases where a party to a trade dispute intends to question the threshold jurisdiction of the Industrial Court to make an adjudication, save upon the limited ground that the representations under s. 20(1) were made out of time, he must do so by seeking to quash, by *certiorari*, the Minister's reference and, in the same proceedings, seek an order of prohibition against the Industrial Court from entertaining the dispute upon the ground that the latter has no jurisdiction to make an adjudication. Where a challenge is not thus taken, the Industrial Court must be permitted to decide the dispute to conclusion and in the process to deal with the jurisdictional question, eg, whether the particular

A claimant is or is not a workman or whether the matter involves the exercise of extra-territorial jurisdiction. On no account ought such matters to be taken or dealt with as preliminary objections. Any other course would, as we have earlier observed, obstruct a speedy disposal of a trade dispute and thereby cut across the spirit and intendment of the Act.

B

[18] From our reading of the arguments raised before the learned judge in the instant appeal, we do not think that the step taken by the company in pursuing this application was seriously disputed by the Minister and the claimant as being procedurally defective C or wrong in law. The challenge embarked upon by the company in this application was proper. What Gopal Sri Ram JCA stressed upon in *Kathiravelu Ganesan (supra)* was that such challenges as to whether, *inter alia*, a claimant is or is not a workman should not be taken or dealt with as a preliminary objection in the D Industrial Court. This was exactly the scenario in *Chong Kim Sang v. Metratrade Sdn Bhd* [2004] 2 CLJ 439. In that case, the challenge taken by the respondent there, namely, that the claimant was not a workman was taken up on a preliminary objection before the Industrial Court which naturally resulted in a delay in E adjudicating the trade dispute. The Industrial Court, on the preliminary objection, held that the claimant, who was the respondent's general manager and executive director at the material time, was not a workman within s. 2 of the Act and as such the Industrial Court did not have jurisdiction to determine F the reference made to it by the Minister. The claimant moved the High Court for an order of *certiorari* to quash the award of the Industrial Court and for an order of *mandamus* to direct the Industrial Court to hear his dismissal on the merits. The High Court dismissed the application. This court allowed the appeal by G the claimant and issued mandamus directing the Industrial Court to adjudicate the claimant's dismissal case on the merits.

[19] Further in his grounds of decision in the instant appeal, the learned judge, after citing *Minister of Labour Malaysia v. National* H *Union of Journalists Malaysia* [1991] 1 MLJ 25 and *Hong Leong Equipment Sdn Bhd v. Liew Fook Chan* [1997] 1 CLJ 665 said that the Minister's discretion under s. 20 of the Act is not unfettered and is liable to be quashed by the court if the Minister exceeds his jurisdiction and that if the applicant can establish I either:

(a) there was an outright refusal by the Minister to consider a relevant matter;

(b) a misdirection by the Minister on a point of law;

(c) the Minister took into account a wholly irrelevant or extraneous consideration; or

(d) the Minister omitted to take into account a relevant consideration;

his decision to refer the representation to the Industrial Court is liable to be quashed by the court.

[20] Again, we do not think that the position of the law as summarised above by the learned judge was seriously disputed in these proceedings. What we are concerned with would be whether the decision of the learned judge was correct in law under the circumstances pertaining to this application and we will now deal with it.

[21] In his grounds of decision in relation to the threshold jurisdiction of the Industrial Court the learned judge said as follows:

> The 1st Respondent Minister, in his Affidavit in Reply of 18.10.2002, set out the basis and ground on which he decided to refer the representation to the Industrial Court. I think it is clear from the 1st Respondent Minister's Affidavit that the 1st Respondent had completely omitted to deal with and decide on the specific threshold jurisdiction issue posed ie, whether the 2nd Respondent, having been removed by way of two (2) resolutions, passed at the Extraordinary General Meeting of the Applicant, can challenge the removals by way of reference under Section 20 of the said Act. This issue was specifically raised in the Applicant's written representation at the conciliation proceedings. The failure by the 1st Respondent Minister to consider and determine the said issue, in any manner, is, with respect, a clear error of jurisdiction on the 1st Respondent Minister's part which, in itself, necessitates intervention by this Court.
>
> Had the 1st Respondent Minister properly directed himself to the issue, he would have concluded that the Industrial Court would have no jurisdiction to determine a removal by way of vote of shareholders for the following reasons:

(i) I am of the opinion that where there is a decision of shareholders to remove a person from positions held in a company, such decision cannot be the subject of adjudication by the Industrial Court and to do so would be to exceed its jurisdiction;

(ii) On a consideration of the Court to consider the relevant facts set out in the Applicant's Affidavit which set out the background of the removal of the 2nd Respondent by shareholders of the Applicant at paragraphs 17 and 18;

(iii) This case presents a novel and unusual situation where the position of the 2nd Respondent in the Applicant was determined by way of a vote of shareholders taken at an Extraordinary General Meeting of the Applicant. It is I think, the first time a removal of a director/executive by shareholders at a general meeting is being challenged by way of a Section 20 reference under the said Act.

Within the same context, in relation to s. 20 of the Act, the learned judge said:

> This section does not, on its express terms, entitle the Industrial Court to enquire into and adjudicate upon what is essentially an issue of company law, ie, the rights of shareholders to remove a director and/or officer of a company and enquire into the basis or otherwise of such decision taken at such meeting of shareholders of a company. Such a removal by shareholders taken by way of resolution of a general meeting of a company cannot amount to a "dismissal" within the meaning of Section 20 of the said Act.

[22] The learned judge's reasons as to why he allowed the company's application can be summarised as follows:

(i) the removal of the claimant from his respective positions was by members exercising their right to vote at an EGM and in law, the members are under no duty to furnish a reason for voting for or against a particular resolution tabled at a general meeting;

(ii) under s. 20 of the Act, the Industrial Court can only adjudicate on a dismissal between a "workman" and an "employer"; if the employer of the claimant is to be taken as the company, on the assumption that the claimant is a workman and which is not the case, then the removal, having been determined by the members who are, in law, separate and distinct from the Company, cannot be the subject of

adjudication by the Industrial Court as they are not parties to whom the Industrial Court may exercise jurisdiction over; the Industrial Court would accordingly be acting in excess of its jurisdiction in seeking to enquire whether a dismissal is without just cause or excuse if it proceeds to adjudicate on the basis on which the members exercised their vote on a particular resolution when such members are not required, in law, to give reasons;

(iii) it is well established that in bringing a claim under s. 20 of the Act a claimant must seek an order of reinstatement as otherwise he cannot maintain such an action; in relation to this, the learned judge said:

> I think that an order of reinstatement (which is in the nature of a statutory injunction), is incompatible with the scheme set out in the Companies Act, 1965 that shareholders must be allowed to determine the affairs of a company including any question on the removal of a officer/director. Any award of reinstatement would, negate such principle which is well established in company law and compel the shareholders, against the wishes expressed by way of a vote at a general meeting to re-engage an officer/director they have deemed should be removed. In the circumstances, I am of the view that the Industrial Court would be exceeding its jurisdiction if it is allowed to hear the reference.

(iv) the Minister misdirected himself in law when he stated in his affidavit that the issue of the workman can only be determined by the Industrial Court and that the issue as to whether the claimant is a workman is a mixed question of law and fact which can only be determined by the Industrial Court; the learned judge was of the view that if the Minister had properly directed himself in law, he would come to the conclusion that the claimant was not a "workman" under the Act; with regards to this, the learned judge also said as follows:

> What is clear is that the 2nd Respondent had full control and power to run the Applicant organisation on a day to day basis and was fundamental in formulating role and implementing policies of the Applicant. Further, the 2nd Respondent, by virtue of his top level management positions in the Applicant, represented the "directing mind and will of

A the Applicant", both in the formulation, implementation and execution of the Applicant's policies and was also fully empowered and authorised to run the Applicant on a day to day basis in all key areas of administration, operations, sales, information technology and finance subject to his reporting to the Board of Directors of the Applicant on a limited basis. He was, therefore, at the very apex of the Applicant's management.

The Supreme Court in *Inchape Malaysia Holdings Bhd. v. RB Gray & Anor* [1985] 2 MLJ 297 decided that a director of the company who is regarded as representing the directing mind and will of the company is not a "workman" under the Act. On this basis, and without more, I think the 2nd Respondent who was a director of the Applicant, cannot be regarded as a "workman" for the purposes of the said Act. In the instant case, the 2nd Respondent, apart from being a director on the Board of the Applicant, held the top executive/management position in the Applicant Company, and hence, cannot be considered, in law a "workman". His position placed the 2nd Respondent in a position of authority in the corporation that employed him, a factor recognised in *Hoh Kiang Ngan* [1995] 3 MLJ 369 as a material consideration in determining who is a "workman". In this regard, in the context of company directors and those holding executive positions, the test in *Inchape v. Gray* continues to apply although the decision itself in Inchape was formally overruled in Kathiravelu Ganesan.

In the instant case, unlike Inchape, the 2nd Respondent's various designations placed him in a position of clear authority in the corporation that employed him ie, the Applicant. Therefore I am of the opinion that whether the "control" test or the "directing will and mind of the company" test is applied, it is clear that the 2nd Respondent was not a "workman" within the meaning of the said Act.

(v) the Minister must decide the threshold jurisdiction question posed and not relinquish that duty by seeking to refer the matter to the Industrial Court.

In conclusion, the learned judge said:

> In summary, I would state that the 1st Respondent Minister has a duty, in law, to consider and decide all questions pertaining to the threshold jurisdiction of the Industrial Court. When such questions of threshold jurisdiction are raised by a party under Section 20 of the said Act, the 1st Respondent Minister must specifically address and decide the questions and such decision must be correct in law. In the instant case, the 1st Respondent Minister failed to decide the specific question of threshold jurisdiction posed to him and further misdirected himself, in law, of the threshold jurisdiction posed and took into account irrelevant matters in making his decision. For these reasons I grant order in terms of (1), (2) and cost of the Application.

[23] We had allowed both these appeals with costs here and below and our reasons for doing so are as follows.

[24] We are of the view that the issue of whether the claimant is a workman is solely for the Industrial Court to decide and that the learned judge was wrong in issuing *certiorari* to quash the decision of the Minister and in issuing the order of prohibition. We would agree with the submission of learned counsel for the claimant that the law is clear, namely, that where there are mixed questions of law or fact arising from representations under s. 20 of the Act, the proper forum to decide on such issues would be the Industrial Court and not the Minister. In *Dr A Dutt v. Assunta Hospital* [1981] 1 MLJ 304 which was referred to by learned counsel for the claimant, Chang Min Tat FJ in delivering the decision of the Federal Court said (at p. 310):

> As for the determination whether Dr. Dutt was or was not a workman within the Act, we have, in an earlier decision *Assunta Hospital v. Dr A Dutt* said that the question is a mixed question of fact and law and it is for the Industrial Court to determine this question.

[25] In *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan* [1997] 1 CLJ 665, this court said that "when a question arises as to whether the Minister has correctly exercised his discretion under s. 20(3) of the Act, it is the solemn duty of a court to undertake a meticulous examination of the facts that were made available to the Minister". After dealing with several authorities, this court held (at p. 715) as follows:

> It follows from these decisions that the Minister must bear in the forefront of his mind that the Act has established a special tribunal to adjudicate upon a dispute arising from representations made under s. 20(1) of the Act and that it is therefore no part of his function to arrive at a concluded view upon the merits of the dispute. His role is limited to ascertaining whether, on the fact and materials placed before him, the representations raise serious questions of fact or of law calling for adjudication.

[26] Thus, the Minister's role under s. 20 of the Act is to ascertain whether the representations, on the facts and material placed before him, raise serious questions of fact or of law calling for adjudication. The learned judge in this instant appeal was however of the view that the Minister took into account irrelevant matters in making his decision to refer the claimant's representations to the Industrial Court for an award. He was also of the view that if the Minister had properly directed himself in law, he would come to the conclusion that the claimant was not a workman. He consequently held that the claimant was not a workman within the meaning of the Act. This question, as we have mentioned earlier, is solely a question for the Industrial Court to decide. A workman, under the Act, is defined in s. 2 as follows:

> "workman" means any person, including an apprentice, **employed by an employer under a contract of employment** to work for hire or reward and for the purposes of any proceedings in relation to a trade dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute. (emphasis added)

[27] A "contract of employment" is defined in s. 2 of the Act as follows:

> "contract of employment" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman;

[28] The facts showed that by letter dated 9 April 1997, the company offered the claimant the aforesaid positions with a monthly basic salary of RM25,000. Other forms of remuneration were also offered to him. He commenced employment with the company with effect from 1 May 1997. He was put on probation and was later confirmed in the aforesaid positions. He was also

appointed director on 1 May 1997. Other terms and conditions of his employment are set out in the Service Manual. The preamble to the Service Manual shows that the terms and conditions therein are applicable to all "Executive Directors" and "confirmed Malaysian employees" of the company holding the rank of Assistant Vice President and above which in the manual are termed "Corporate Officers" or "Officers, but does not apply to "non-Executive Directors". The Service Manual would clearly apply to the claimant. The articles contained therein are comprehensive enough and amongst the articles are the following:

(a) A Corporate Officer who has successfully completed his probationary period shall be informed in writing that he has been confirmed in his regular employment with the company (art. 2(c));

(b) After confirmation employment may be terminated by either party giving to the other party two (2) months' notice or salary *in lieu* of notice (art. 3);

(c) Hours of work (art. 4);

(d) Transfers of Corporate Officers in the course of its operations (art. 5);

(e) Annual leave (art. 7) and sick leave (art. 11);

(f) Mileage claims (art. 19), travelling allowances (art. 20), outstation accommodation (art. 21) and air travel (art. 22);

(g) Employee group insurance scheme (art. 29);

(h) Retirement on attaining the age of 55 (art. 33).

[29] Upon perusing the company's articles of association we also noted the following article:

> Article 77.
>
> (A) *The remuneration of the Directors, who hold no executive office with the Company, for their services as Directors shall be determined by the Company by ordinary resolution at a general meeting* and thereafter shall not be increased except by an ordinary resolution of the Company passed an annual or other general meeting of the Company where notice of the proposed increase has been given in the notice convening the Meeting.

(B) *Executive Directors of the Company shall be remunerated in the manner as may from time to time be determined by the Directors* but such remuneration shall not include a commission on or percentage of turnover. Fees payable to the executive Directors shall not be increased except pursuant to a resolution passed at a General Meeting where notice of the proposed increase has been given in the notice convening the meeting. (emphasis added)

[30] Articles 91 to 93 which deal with "Officers" and art. 94 which refers to an "Executive Committee" read as follows:

OFFICERS

91.(1) *The Directors may appoint Officers of the Company*. The Officers may consist of a Chairman of the Board of Directors, several *Executive Directors, a President* and a Secretary or any of the aforesaid offices and such other Officers as the Directors may determine. The Directors shall have power from time to time to appoint an Officer or Officers to fill an office becoming vacant or to appoint an Officer to an additional or a new office. None of the Officers need be a member. Any person may hold more than one such office except that the Secretary shall not be a director or *vice versa*.

(2) *The Executive Directors may be designated as Managing Director, Finance Director and any other designations as the Directors may decide*. The Managing Director so appointed shall not while holding that office, be subject to retirement by rotation and he shall not be taken into account in determining the rotation or retirement of Directors or the number of Directors to retire, but shall otherwise be subject to the same provisions as to resignation and removal as the other Directors of the Company.

(3) The functions of Managing Director, President and Finance Director shall be as follows:

(a) *The Managing Director (or a person holding a similar office called by any other title the Directors may decide) shall be the Chief Executive Officer of the Company and shall subject to any directions from the Board of Directors have direct supervision of the affairs of the Company and of the day to day running of the Company*. The Managing Director shall be the Principal Officer under the Malaysian Insurance Act 1963.

(b) The President shall be the Chief Operating Officer of the Company.

(c) The Finance Director shall be the Chief Financial Officer and Treasurer of the Company.

92. *The Company in general meeting may at any time remove an Officer from office.* Unless the Company shall resolve that a vacated office be suspended or abolished the Directors may fill the same at any time.

93. The Officers shall perform such duties as may from time to time be prescribed by the Directors, subject to the provisions of these presents.

EXECUTIVE COMMITTEE

94.(1) The Directors may appoint the Executive Directors and certain Non-Executive Directors to an Executive Committee which shall consist of not more than seven members.

(2) *Subject to the express directions of the Board of directors and to any directions which may be given by the Company in general meeting, the Executive Committee shall manage the business of the Company,* and shall be empowered to do on behalf of the Company any act which the Directors may do, except make call, forfeit shares, borrow money, or fill a casual vacancy on the Board. (emphasis added)

[31] The above facts and material would have been made available to the Director General and consequently the Minister. A perusal of the company's articles of association referred to above would show that there is a difference between non-executive directors and executive directors in relation to functions, designation, remuneration, powers and retirement; it can be illustrated as follows:

(i) remuneration of directors who hold no executive function shall be determined by the company by ordinary resolution in general meeting;

(ii) executive directors shall be remunerated in the manner as may from time to time be determined by the directors but fees payable to executive directors shall not be increased except pursuant to a resolution passed in general meeting;

(iii) the board may appoint "officers" of the company which may consist of, *inter alia*, executive directors and a President;

(iv) executive directors may be designated managing director, finance directors and any other designation as the directors may decide;

(v) the managing director so appointed shall not while holding that office be subject to retirement by rotation (as opposed to a director);

(vi) the functions of the managing director, president and finance director shall be:

(a) the managing director shall be the chief executive officer;

(b) the president shall be the chief operating officer;

(vii) the directors may appoint an executive director to the Executive Committee;

(viii) the Executive Committee, subject to the express directions of the board and any directions given by the company in general meeting, shall manage the business of the company.

[32] The company's letter informing the claimant of his appointment to the aforesaid positions read together with the Service Manual and the company's articles of association would denote the existence of a contract of employment between the company and the claimant. It would also denote that the Claimant will be wearing two hats, *viz.*, as "Corporate Officer" or "Officer" he is an employee and as executive director he is a member of the board.

[33] The Executive Committee of which the claimant is a member is the body that shall manage the business of the company, subject to the express directions of the board and any directions given by the company in general meeting. Under the provisions of the Companies Act 1965 and the company's articles of association, members of the company entitled to attend a general meeting of the company may vote on any resolution proposed. The company in general meeting may at any time remove an officer from office. Thus, the claimant can be dismissed by the company in general meeting.

[34] The learned judge however has decided that the claimant is not a workman as defined under s. 2 of the Act. The material before us highlighted earlier seems to suggest otherwise. The Industrial Court has yet to adjudicate upon the claimant's representations and it is now prohibited from doing so. The learned judge has issued *certiorari* to quash the decision of the

Minister on the grounds that he failed to decide the specific question of threshold jurisdiction and further misdirected himself, in law, of the threshold jurisdiction posed and took into account irrelevant matters in making his decision. We cannot fathom this. We are of the view that based upon the facts and material before the Minister, he correctly exercised his discretion under s. 20(3) of the Act in referring the claimant's representations to the Industrial Court for an award.

[35] We would agree with learned counsel for the claimant that where there is an issue of workman involved, the only legal forum to deal with this issue is the Industrial Court. A *certiorari* is given only in cases where an error of law is disclosed. We cannot see any error of law disclosed in the Minister's decision to refer the claimant's representations to the Industrial Court. "judicial review is concerned, not with the decision, but with the decision-making process" and so say Lord Brightman in *Chief Constable of the North Wales Police v. Evans* [1982] 3 All ER; [1982] 1 WLR 1155 at p. 1173. The decision-making process adopted by the Minister was in accordance with s. 20 of the Act, namely, upon receiving the notification of the Director General he exercised his discretion, after seeing it fit, to refer the claimant's representations to the Industrial Court for an award. We cannot find anything wrong with the Minister's decision in doing so. There are serious and fundamental disputes of fact and questions of law that arise from the claimant's representations and these are matters which have to be dealt with by the Industrial Court. The facts placed before the Minister were adequate for him to refer the claimant's representations to the Industrial Court. It is the Industrial Court which will have to decide whether the Claimant is a workman as defined under the Act. Once the Industrial Court determine the claimant was a workman, it has the jurisdiction.

[36] We are of the view that the learned judge erred in law in holding that the claimant was not a workman as that would be tantamount to usurping the power of the Industrial Court. We noted that his decision was based on his perception that the claimant was the "apex" of the company's management and also the observations of the Supreme Court in *Inchcape (supra)*. The learned judge seems to have overlooked the decision of the Federal Court in *Hoh Kiang Ngan (supra)* wherein the Federal Court was of the view that observations made by the Supreme Court in

A *Inchcape* concerning the claimant's role as the brain or directing mind and will of the company must be read as being confined to the peculiar facts of that case and not as laying down any universal test. Furthermore, *Inchcape* was consequently overruled by the Federal Court in *Kathiravelu Ganesan (supra)*.

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[37] In the instant appeal, we are also of the view that the learned judge erred in law in holding that where there is a decision of members of a company in general meeting to remove a person from executive positions held in a company, such decision cannot C be the subject of adjudication by the Industrial Court and to do so would be to exceed its jurisdiction. We cannot fathom this. It was the company which employed the claimant to the aforesaid positions and it was the company which removed the claimant from the aforesaid positions. As discussed earlier, the company D may, according to the Service Manual, terminate the claimant's employment as "Corporate Officer" or "Officer" by giving him 2 months' notice or two months salary *in lieu* of notice. The company may also by ordinary resolution in general meeting remove an "Officer" from office and hence a general meeting has E to be called to pass such resolutions. Section 145 of the Companies Act 1965 provides that notice of a general meeting shall be served on every member having a right to attend and vote thereat. The company has to remove the claimant from the aforesaid positions and also as executive director by way of F ordinary resolutions passed in an EGM, *viz*., a general meeting. The members present at the EGM by majority voted in favour of the resolutions. The company henceforth issued the dismissal letter. We are of the view that it is irrelevant that the claimant was removed by way of an ordinary resolution at a general G meeting wherein members of the company attended and voted. This was the procedure that the company adopted *vide* its articles of association and Service Manual. Furthermore, the claimant as an executive director has to be removed by way of ordinary resolution in general meeting.

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[38] Thus, we are of the view that the learned judge made an erroneous finding of law when he ruled that the removal of the claimant by way of general meeting cannot be the subject of adjudication by the Industrial Court. The claimant considered he has been dismissed without just cause or excuse by the company. I The mode, method or procedure adopted by the company in removing him has nothing to do with s. 20 of the Act. At the end

of the day it was the company which employed him and it was the company which removed him from the aforesaid positions. The effect of members of a company casting their votes at an EGM to pass resolutions to remove an executive director and/or a corporate officer from such positions is still regarded as an act of the company. As such, we cannot fathom the decision of the learned judge that such a dismissal in general meeting cannot be subject to adjudication by the Industrial Court. This is a wrong perception of the law and gives rise to absurdity as companies will be able to terminate any of its employees through its members in general meeting knowing that the Minister cannot refer the dismissed employee's representations to the Industrial Court for an award, notwithstanding that on the face of record the dismissal was without just cause or excuse.

[39] Further in his grounds of decision, the learned judge also said that it is well established that in bringing a claim under s. 20 of the Act, a claimant must seek an order of reinstatement as otherwise he cannot maintain such an action. In relation to this, he was of the view that an order of reinstatement "is incompatible with the scheme set out in the Companies Act 1965 that members must be allowed to determine the affairs of a officer/director" and an award of reinstatement would negate such principle. As such, he was of the view that the Industrial Court would be exceeding its jurisdiction if it is allowed to hear the claimant's representations. With respect to the learned judge, we cannot agree. In relation to this we would align ourselves with the submission of learned counsel for the claimant which is as follows:

> The primary remedy under s. 20 of the Industrial Relations Act 1967 is reinstatement. The relief of reinstatement under s. 20 of the Act is not in any way incompatible with the scheme of the Companies Act 1965 as ruled by the High Court. The remedy of reinstatement under s. 20 of the Act does not operate as an injunction to prevent the shareholders from passing any resolution. It cannot, in any manner, fetter the rights of the shareholders to pass the resolution to remove him. It is only when the dismissal of the Appellant is found to be unjust that the order of reinstatement would be issued.

[40] We would hold that the Minister's act in referring the claimant's representations under s. 20 of the Act to the Industrial Court for an award was a correct exercise of discretion under the circumstances of this instant appeal. The company's averment that

A the Minister erred in law and has acted without jurisdiction or in excess of jurisdiction and has taken into account irrelevant matters bear no merits. We cannot find any provision under the Companies Act 1965 or the Act which preclude an employee holding the position of Managing Director, Chief Executive Officer
B or any other executive position by whatever name called who was engaged under a contract of employment with a company from challenging his dismissal or removal by the company through the adoption of its member's resolution in general meeting.

C **[41]** For the reasons aforesaid, we allowed both appeals with costs here and below and set aside all orders made by the learned judge and reinstate the Minister's decision to refer the claimant's representations to the Industrial Court for an award. The deposit is to be refunded to the appellants.

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